

## RECORD OF THE SENATE

**TUESDAY, JUNE 6, 1989**

### OPENING OF THE SESSION

*At 10:26 a.m., the Honorable Jovito R. Salonga, President of the Senate, called the session to order.*

**The President.** Binubuksan ang pulong ng Senado.

Pangungunahan tayo sa panalangin ni Senador Juan Ponce Enrile.

*Everybody remained standing for the opening prayer.*

### PRAYER

**Senator Enrile.**

Almighty God,  
Bestow upon us and our people a tenacity of spirit  
To pursue with vigor and resolution  
The campaign against graft and corruption.

Enlighten the leaders of our Republic, O Lord,  
To allow neither friendship nor kinship  
To compromise the prosecution of offenders  
So that the ends of justice are served  
And a new moral order is installed in the land.

Amen.

### ROLL CALL

**The President.** Babasahin ng Kalihim ang talaan ng mga Senador.

**The Secretary.**

Senator Hersherson T. Alvarez .....	Present
Senator Edgardo J. Angara .....	Present
Senator Agapito A. Aquino .....	Present
Senator Juan Ponce Enrile .....	Present
Senator Joseph Ejercito Estrada .....	Present*
Senator Neptali A. Gonzales .....	Present
Senator Teofisto T. Guingona, Jr. ....	Present
Senator Ernesto F. Herrera .....	Present
Senator Sotero H. Laurel .....	**
Senator Jose D. Lina, Jr. ....	Present
Senator Ernesto M. Maceda .....	Present
Senator Orlando S. Mercado .....	Present

\* Arrived after the roll  
\*\* On official mission

Senator John H. Osmeña .....	Present
Senator Vicente T. Paterno .....	Present
Senator Aquilino Q. Pimentel, Jr. ....	Present
Senator Santanina T. Rasul .....	Present
Senator Alberto G. Romulo .....	Present
Senator Rene A. V. Saguisag .....	Present
Senator Leticia Ramos Shahani .....	**
Senator Mamintal Abdul J. Tamano .....	**
Senator Wigberto E. Tañada .....	Present
Senator Victor S. Ziga .....	Present*
The President .....	Present

**The President.** Labingwalo ang mga Senador na dumalo sa ating pulong; mayroon tayong korum.

### THE JOURNAL

**Senator Mercado.** Ginoong Pangulo, hinihingi ko na huwag nang basahin ang *Journal* ng nakalipas na sesyon at ito ay ituring na sinasang-ayunan.

**The President.** Mayroon po bang tutol? [Silence] Pinagtibay.

The Secretary will now proceed with the reading of the Order of Business.

### REFERENCE OF BUSINESS

### MESSAGES FROM THE HOUSE OF REPRESENTATIVES

**The Secretary.**

June 1, 1989

**Mr. President:**

I have been directed to inform the Senate that the House of Representatives approved on May 31, 1989 the Conference Committee Report on the disagreeing votes of the two Houses on House Bill No. 1469, entitled

### AN ACT NAMING THE MANILA-CAVITE COASTAL ROAD AS THE AGUINALDO BOULEVARD.

Very respectfully yours,

(Sgd.) QUIRINO D. ABAD SANTOS, JR.  
Secretary

The Honorable  
JOVITO R. SALONGA  
President of the Senate  
Manila

Senator Guingona. Mr. President, I think there has to be a period.

Senator Saguisag. I think I see the point that there should be something like "WITHIN THREE YEARS FROM THE EFFECTIVITY OF THIS ACT". Subject to style, I accept, Mr. President.

The President. Is there any objection? [Silence] Is there any further amendment? Hearing none, the amendment is approved.

The Majority Floor Leader is recognized.

APPROVAL OF SENATE BILL NO. 181  
ON SECOND READING, AS AMENDED

Senator Mercado. Mr. President, I move that we close the period of amendments and vote on Second Reading on Senate Bill No. 181.

The President. We shall now vote on the bill on Second Reading. As many as are in favor of the bill, will please say *Aye*. [Several Senators: *Aye*] As many as are against will please say *Nay*. [Silence] Senate Bill No. 181 is approved on Second Reading.

BILL ON SECOND READING  
Senate Bill No. 733 - Plunder  
(Continuation)

Senator Mercado. Mr. President, I move that we resume consideration of Senate Bill No. 733 as reported out under Committee Report No. 451.

The President. Resumption of consideration of Senate Bill No. 733 is now in order.

Senator Mercado. Mr. President, we are still in the period of interpellations on this measure.

The President. Is there any interpellation? [Silence]

Senator Mercado. If there are none, Mr. President, I move that we close the period of interpellations and proceed to the committee amendments.

The President. Is there any objection? [Silence] Hearing none, the motion is approved.

Are there any committee amendments?

COMMITTEE AMENDMENTS

Senator Tañada. Yes, Mr. President, we have the following committee amendments:

On page 1, line 1, between the words "in" and "the", insert the words "THIS ACT", so that the phrase will read as follows: "As used in THIS ACT the term".

The President. Is there any objection? [Silence] Hearing none, the amendment is approved.

Senator Tañada. On the same page, between lines 6 and 7, insert the words "AND ANY OF ITS SUBDIVISIONS, AGENCIES, OR INSTRUMENTALITIES, INCLUDING", so that the phrase will read: 'Government' includes the National Government AND ANY OF ITS SUBDIVISIONS, AGENCIES, OR INSTRUMENTALITIES, INCLUDING".

The President. Is there any objection? [Silence] Hearing none, the amendment is approved.

Senator Tañada. On the same page 1, line 7, write in plural the word "government". Remove the comma (,) and insert the word "AND".

The President. Is there any objection? [Silence] Hearing none, the amendment is approved.

Senator Tañada. Write in plural the word "corporation".

The President. Is there any objection? [Silence] Hearing none, the amendment is approved.

Senator Tañada. Delete the words "and all other instrumentalities or agencies of the Republic of the Philippines".

The President. Is there any objection? [Silence] Hearing none, the amendment is approved.

Senator Tañada. Delete the word "branches" and insert the word "SUBSIDIARIES" on line 11, page 1, so that the whole sentence will read as follows: "Government' includes the National Government AND ANY OF ITS SUBDIVISIONS, agencies or instrumentalities, including LOCAL GOVERNMENT AND government-owned or -controlled corporations and their SUBSIDIARIES."

The President. Is there any objection? [Silence] Hearing none, the amendment is approved.

Senator Tañada. On the same page 1, line 10, after the word "includes", insert the word "ANY" and delete the word "and" and insert the word "OR", then write the word "persons" in singular,

so that the sentence will read as follows: "Person' includes ANY natural OR juridical person, unless the context indicates otherwise."

**The President.** Is there any objection? [Silence] The Chair hears one; the amendment is approved.

**Senator Tañada.** On the same page 1, line 13, after the word "of", insert the word "ANY" and write in singular the word "persons" so that the phrase will read, so that the sentence will read: "Ill-gotten wealth' means any asset, property, business enterprise or material possession of ANY person".

**The President.** Is there any objection? [Silence] The Chair hears none; the amendment is approved.

**Senator Tañada.** On the same page 1, line 20, delete the words "Through the receipt" and insert the words "BY RECEIVING". That is all, Mr. President.

**The President.** It should be "BY RECEIVING directly or indirectly" and delete the word "of".

**Senator Tañada.** Yes, Mr. President.

**The President.** Is there any objection? [Silence] The Chair hears none; the amendment is approved.

**Senator Tañada.** On page 2, line 3, between the words "the" and "official", insert the word "PUBLIC".

**The President.** Is there any objection? [Silence] Hearing none, the amendment is approved.

**Senator Tañada.** On page 2, line 12, delete the words "Through the establishment of" and insert the words "BY ESTABLISHING".

**The President.** Is there any objection? [Silence] The Chair hears none; the amendment is approved.

**Senator Tañada.** On the same page, line 18, delete the word "themselves" and insert the word "HIMSELF". So, instead of "themselves", it will be "HIMSELF".

**The President.** Is there any objection? [Silence] The Chair hears none; the amendment is approved.

**Senator Tañada.** On the same page 2, line 20, delete the words "crime" and "and", and insert the words "OFFENSE OF PLUNDER."

So that the heading will read as follows: "Definition of the OFFENSE OF PLUNDER; Penalty."

**The President.** Is there any objection? [Silence] The Chair hears none; the amendment is approved.

**Senator Tañada.** The proposed amendment, Mr. President, is to delete the words "other persons, whether", appearing on pages 21 and 22, so that the phrase would read as follows: "Any public officer who, by himself or in connivance with members of his family," and so on.

**The President.** Is there any objection? [Silence] The Chair hears none; the amendment is approved.

**Senator Tañada.** On page 2, line 23, delete the word "and", and insert the word "OR"; write in singular the word "others", and insert the word "PERSONS"; delete the word "the", and insert the word "HIS"; and then, delete the words "of himself." So that the phrase would read as follows: "business associates, subordinates or other PERSONS, for HIS benefit."

**The President.** Is there any objection? [Silence] The Chair hears none; the amendment is approved.

**Senator Tañada.** On the same page, line 24, insert the following words: "OR FOR THE BENEFIT OF MEMBERS OF HIS FAMILY, OR HIS RELATIVES, BUSINESS ASSOCIATES, SUBORDINATES OR OTHER PERSONS comma (,)." So that said phrase will read as follows: "for HIS benefit OR FOR THE BENEFIT OF HIS FAMILY, OR HIS RELATIVES, BUSINESS ASSOCIATES, SUBORDINATES OR OTHER PERSONS comma (,)."

**The President.** Is there any objection?

Senator Maceda is recognized.

**Senator Maceda.** Mr. President, since there is no definition of "family" or "relative" in Section 1, I was wondering whether we can include in this provision the concept of "relatives by affinity or in-laws."

**Senator Tañada.** Yes, Mr. President.

**Senator Maceda.** Subject to style.

**The President.** Is there any objection? [Silence] The Chair hears none; the amendment is approved.

Next amendment.

**Senator Tañada.** On line 24, page 2, delete the words "systematic or methodical", so that the phrase will just read: "through a scheme, or conspiracy".

**The President.** Is there any objection? [*Silence*] Hearing none, the amendment is approved.

**Senator Tañada.** On the same page 2, lines 28 and 29, delete the words: "violations of the Anti-Graft and Corrupt Practices Act (R.A. 3019, as amended)" and insert the words "AND GRAFT OR CORRUPT PRACTICES. And then, after the word "offense", insert the word "SHALL". So that, the phrase would read as follows: "illegal exactions, GRAFT OR CORRUPT PRACTICES and like offenses SHALL amass, ..."

**The President.** Is there any objection? [*Silence*] Hearing none, the amendment is approved.

**Senator Tañada.** On page 3, delete lines 1, 2, 3, and 4, Mr. President. So that the continuation of the sentence shall start with the word "shall". And on line 5, delete also the words "shall be found guilty of the crime of plunder and", so that the first word on line 3 will be "SHALL". And we can read the entire section, Mr. President, after the other amendments on the same section.

**The President.** Is there any objection? [*Silence*] Hearing none, the amendment is approved.

**Senator Tañada.** On the same page 3, line 7, after the word "from", insert the words "HOLDING ANY", then delete the word "Furthermore" and write in capital the first letter of the word "the".

**The President.** Is there any objection? [*Silence*] Hearing none, the amendment is approved.

**Senator Tañada.** On the same page 3, lines 8 and 9, delete the words "so acquired, accumulated or amassed by them or escheated".

**The President.** Is there any objection? [*Silence*] Hearing none, the amendment is approved.

**Senator Tañada.** On the same page 3, lines 10 and 11, delete the words "in an amount equivalent to double of the assets illegally accumulated." There will be an individual amendment on this point later on, Mr. President.

**The President.** Is there any objection? [*Silence*] There being none, the amendment is approved.

**Senator Tañada.** So that Section 2 will now read as follows:

"Any public OFFICIAL who, by himself or in connivance with members of his family, relatives, business associates, subordinates or other PERSONS, for HIS benefit OR FOR THE

BENEFIT OF MEMBERS OF HIS FAMILY, HIS RELATIVES, BUSINESS ASSOCIATES, SUBORDINATES OR OTHER PERSONS, through a scheme or conspiracy consummated by a series of overt or criminal acts, such as bribery, extortion, malversation of public funds, swindling, falsification of public documents, coercion, theft, frauds and illegal exactions, graft OR corrupt practices and like offenses, SHALL amass, accumulate or acquire ill-gotten wealth IN THE AGGREGATE AMOUNT OR TOTAL VALUE OF ONE HUNDRED MILLION PESOS (P100,000,000.00) OR MORE shall be guilty of the OFFENSE of plunder and shall be punished by life imprisonment and perpetual disqualification from HOLDING ANY public office. ANY PERSON WHO SCHEMED OR CONSPIRED WITH THE SAID PUBLIC OFFICIAL IN THE COMMISSION OF PLUNDER OR KNOWINGLY BENEFITED FROM THE PROCEEDS OF THE SAID OFFENSE SHALL LIKEWISE BE PUNISHED BY LIFE IMPRISONMENT. The court shall declare any and all ill-gotten wealth forfeited in favor of the State."

So that would be Section 2, Mr. President, subject to refinement and style.

**The President.** Is there any objection to that? [*Silence*]

**Senator Romulo.** Mr. President.

**The President.** Senator Romulo is recognized.

**Senator Romulo.** Mr. President, may I just be enlightened as a coauthor on the deletion of the phrase: "forfeited in favor of the State in an amount equivalent to double the value of the assets illegally accumulated." It seems this has been deleted, Mr. President.

**Senator Tañada.** That is correct, Mr. President, because it was the thinking that if that would be retained, it could just prolong the trial of the case and make more difficult the conviction of the alleged grafter or the accused.

But there is an individual amendment that is going to be proposed, Mr. President, which would include any interests or earnings or income that this ill-gotten wealth would earn. In the period of individual amendments that will be proposed, Mr. President.

We believe that the individual amendment that will be proposed will cover the concern of Senator Romulo, as it will provide that the fruits and earnings or income of this ill-gotten wealth would also be forfeited in favor of the government.

**The President.** Anyway, why do we not take that up in the period of individual amendments?

Senator Romulo. Yes, Mr. President.

The other question that I wanted to pose is: Did I hear it right that the amount of P100 million was also deleted?

Senator Tañada. Right now, the amount still stands at P100 million but Senator Maceda, during the period of interpellations, had brought out the possibility of amending that to make it a lower amount.

Senator Romulo. That is correct, Mr. President.

The third item on which I wanted some clarification is: What if — I understand that this is a scheme or conspiracy and a series of overt act — by one act, any one of this act we can prove, and of course, that is not a series, are we precluded then from...?

Senator Tañada. No, Mr. President. In that eventuality, the person, public official or private citizen, could be prosecuted under the existing Anti-Graft and Corrupt Practices Act or other special laws like the ill-gotten wealth law.

Senator Romulo. But not under this proposed bill.

Senator Tañada. Not under this proposed bill.

Senator Romulo. The Gentleman feels that that is amply covered in the existing Anti-Graft law.

Senator Tañada. Yes, Mr. President.

Senator Romulo. And because of the rule of evidence here, would it not be also proper to include an act which one can prove, although it is not a series?

Senator Tañada. The bill now being discussed is intentionally supposed to cover a series of acts which indicates a conspiracy or a scheme to amass this ill-gotten wealth.

Senator Romulo. I would like to thank the Gentleman for the moment.

Senator Tañada. Thank you.

Senator Paterno. Mr. President.

The President. Senator Paterno is recognized.

Senator Paterno. I just would like to inquire whether the penalty of life imprisonment and perpetual disqualification from public office is a set penalty. In other words, is that the maximum penalty that is imposed?

Senator Tañada. Yes, Mr. President.

Senator Paterno. There may be penalties less than that imposed for the offense of plunder, under this wording?

Senator Tañada. If what is proven in court is that the amount involved is P100 million at least, then that would be the penalty imposed — life imprisonment and then, permanent disqualification from holding public office.

Senator Paterno. So, in effect, if the crime of plunder is proven, then the penalty is set at life imprisonment and perpetual disqualification?

Senator Tañada. Yes, Mr. President.

Senator Paterno. I am just trying to clarify to set the stage for an amendment during the period of individual amendment, Mr. President.

Senator Tañada. The Senate President Pro Tempore has mentioned a situation where the accused probably will, say, plead guilty, then, perhaps, because of that plea of guilty, the penalty would be reduced in accordance with the Revised Penal Code.

Senator Paterno. Just to disclose my intentions, Mr. President: that is for a minimum penalty of life imprisonment but it would be declared a heinous crime subject to the death penalty. That was my intention.

Senator Tañada. Yes, Mr. President.

The President. All right. Next amendment.

Senator Tañada. On page 3, line 29, between the words "and" and "benefits", insert the word "OTHER".

The President. Is there any objection? [Silence] Hearing none, the amendment is approved.

Senator Tañada. On page 4, line 1, delete the word "crime" and insert the word "OFFENSE".

The President. Is there any objection? [Silence] Hearing none, the amendment is approved.

Senator Tañada. Then in the title of the bill, Mr. President, delete the word "CRIME" and insert the word "OFFENSE" so that the title would read as follows:

AN ACT DEFINING AND PENALIZING THE OFFENSE OF PLUNDER.

**The President.** Is there any objection? [*Silence*] Hearing none, the amendment is approved.

**Senator Pimentel.** Mr. President.

**The President.** Senator Pimentel is recognized.

**Senator Pimentel.** Are we ready for the individual amendments, Mr. President?

**Senator Tañada.** Just one last amendment, Mr. President. On line 3 of page 1, we propose to change the word "official" to "OFFICER", so that it will read: "Public OFFICER", instead of "Public official". And we offer this as an omnibus amendment.

**The President.** Let us make it an omnibus amendment. Is there any objection? [*Silence*] Hearing none, the amendment is approved.

**Senator Tañada.** That is all for the Committee amendments, Mr. President.

**The President.** All right. Let us proceed to the individual amendments.

On page 1.

**Senator Pimentel.** Mr. President.

**The President.** Senator Pimentel is recognized.

#### PIMENTEL AMENDMENT

**Senator Pimentel.** The amendment that I would like to introduce really is on the title, on the word "OFFENSE" which is found in many places of the bill also. I would like to suggest that we go back to the word "crime". The reason is that under Criminal Law, Mr. President, an offense is something that is committed by *dolo* or by *culpa* and there are definite elements that constitute an offense as defined under the Revised Penal Code. Normally, when a violation of the law is defined by special law, then we call it a crime, instead of an offense. I am just wondering, maybe, we can put that standard difference.

**Senator Tañada.** We were thinking, Mr. President, that since this would be a special law, the more appropriate term to use would be "offense" instead of "crime." But if the intention really is to send the message that plunder is looked upon as something more serious than an offense, then I would have no objection to using the word "crime".

**The President.** In other words, it is accepted.

**Senator Tañada.** Yes, Mr. President.

**The President.** Is there any objection? [*Silence*] Hearing none, the amendment is approved.

**Senator Guingona.** Mr. President.

**The President.** Senator Guingona is recognized.

**Senator Guingona.** On page 3, Mr. President, if there is no anterior amendment.

**The President.** Is there any amendment on page 1? [*Silence*] On page 2?

**Senator Maceda.** Mr. President.

**The President.** Senator Maceda is recognized, then Senator Ziga.

#### MACEDA AMENDMENT

**Senator Maceda.** I do not know, Mr. President, if I am using the right copy, but in subparagraph 4 of page 2, whatever the correct line is, "By obtaining, receiving, or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation..." May I know what line is this paragraph in the Gentleman's bill?

**Senator Tañada.** The original bill, Mr. President, that would be lines 8 to 11. That is the bill which has not yet incorporated the Committee amendments.

**Senator Maceda.** Is that what we are using?

**Senator Tañada.** Yes, Mr. President.

**Senator Maceda.** All right. After the word "participation" on line 10, add the following words: "INCLUDING THE PROMISE OF FUTURE EMPLOYMENT".

**Senator Tañada.** Accepted, Mr. President.

**The President.** Is there any objection? [*Silence*] Hearing none, the amendment is approved.

#### ZIGA AMENDMENTS

**Senator Ziga.** Mr. President.

**The President.** Senator Ziga is recognized.

**Senator Ziga.** Thank you, Mr. President.

I would like to propose an amendment on page 2, line 25. Delete the word "consummated", and insert the word "COMMITTED".

Senator Tañada. Accepted, Mr. President.

The President. Is there any objection? [Silence] Hearing none, the amendment is approved.

Senator Ziga. Also, Mr. President, on the same page, line 28, after the word "exactions", I propose that we insert the words as defined in the Revised Penal Code.

The President. What is the pleasure of the Sponsor?

Senator Tañada. Accepted, Mr. President.

The President. Is there any objection? [Silence] Hearing none, the amendment is approved.

Senator Ziga. Mr. President, also on page 2, line 29, after the word "Practices", I propose that we insert the words as defined in Republic Act No. 3019.

The President. What is the pleasure of the Sponsor?

Senator Tañada. Accepted, Mr. President.

The President. Is there any objection? [Silence] Hearing none, the amendment is approved.

Senator Maceda. Mr. President.

Senator Maceda. In line with our interpellations that sometimes "one" or maybe even "two" acts may already result in such a big amount, on line 25, would the Sponsor consider deleting the words "a series of overt or". To read, therefore: "or conspiracy COMMITTED by criminal acts such as". Remove the idea of necessitating "a series". Anyway, the criminal acts are in the plural.

Senator Tañada. That would mean a combination of two or more of the acts mentioned in this.

The President. Probably, two or more would be...

Senator Maceda. Yes, because "a series" implies several or many; two or more.

Senator Tañada. Accepted, Mr. President.

The President. All right. Is there any objection?

Senator Romulo. Mr. President.

The President. Senator Romulo is recognized.

Senator Romulo. Mr. President, I was going to suggest prior to Senator Maceda that on line 24: "SHALL THROUGH ONE overt or criminal act OR..." I was just thinking of one which is really not "a series".

The President. If there is only one, then he has to be prosecuted under the particular crime. But when we say "acts of plunder" there should be, at least, two or more.

Senator Romulo. In other words, that is already covered by other acts.

Senator Tañada. If only one act, then it would be covered by existing laws, Mr. President.

The President. Is there any more amendments?

Senator Guingona. Mr. President.

The President. Senator Guingona is recognized.

Senator Guingona. Before the Committee amendments, Mr. President, what was line 11, page 3, after the word "accumulated period (.)" "PROVIDED, HOWEVER, THAT ACQUITTAL IN THE CRIME OF PLUNDER SHALL NOT BE A BAR TO THE PROSECUTION OF OTHER OFFENSES NOT NECESSARILY INCLUDED IN THE CRIME OF PLUNDER."

The President. All right.

Senator Tañada. How is that again, Mr. President?

Senator Guingona. "PROVIDED, HOWEVER, THAT ACQUITTAL IN THE CRIME OF PLUNDER SHALL NOT BE A BAR TO THE PROSECUTION OF OTHER OFFENSES NOT NECESSARILY INCLUDED IN THE CRIME OF PLUNDER."

This does not violate the double jeopardy principle, Mr. President. It gives justice because if he has committed several crimes, and since the evidence is not forthcoming for some, it would be unjust for him to be acquitted in plunder and also be acquitted in the other crimes that are not necessarily included.

Senator Tañada. I think that was the point raised by Senator Gonzales during the period of interpellations, and this would raise the question of double jeopardy.

Senator Guingona. Yes, but double jeopardy has...

Senator Tañada. If the acts are not necessarily included in the crime of plunder of which he is charged, then, perhaps, the question of double jeopardy would not arise. But, if in the Information accusing him of the crime of plunder, those other acts are included, then that would be a different story, Mr. President.

Senator Guingona. That is to be decided on a case-to-case basis. But, if it is not necessarily included in the charge of plunder, then he may still be open to prosecution for the other crimes.

Senator Tañada. By saying "NOT NECESSARILY INCLUDED", Mr. President, does the Gentleman mean to say not stated or not mentioned in the Information?

Senator Guingona. No, it may be mentioned, but not as that specific crime.

The President. Probably "NOT INCLUDED IN THE INFORMATION FOR PLUNDER".

Senator Guingona. It need not be spelled out, Mr. President.

Senator Tañada. My worry is, if it is included and is expressly mentioned in the Information, then the question of double jeopardy would arise.

Senator Guingona. That is why we are stating that the determination, Mr. President, is that it is not necessarily included.

Senator Tañada. So, how would it read again, Mr. President?

Senator Guingona. "PROVIDED, HOWEVER, THAT ACQUITTAL IN THE CRIME OF PLUNDER SHALL NOT BE A BAR TO THE PROSECUTION OF OTHER OFFENSES NOT NECESSARILY INCLUDED IN SAID CRIME OF PLUNDER."

The President. Probably, "NOT NECESSARILY INCLUDED IN THE INFORMATION", because, if in the Information, bribery and malversation of public funds are included, the acquittal on that will not bar prosecution for other crimes not included in the Information.

Senator Guingona. Yes, Mr. President, but the allegations in the Information may not necessarily spell out specifically the crime of malversation or unjust enrichment or anti-graft. It may just be general, which would cover either one. But, if that was not necessarily included, it was not the means to attain the plunder, then it is not double jeopardy.

Senator Tañada. Let us say, Mr. President, that in the Information charging one with plunder, the crime of falsification

of public documents is not alleged in the Information, and the person is acquitted of the charge of plunder, then, he can be prosecuted for falsification of public documents.

Senator Guingona. Yes, if the evidence shows that there is falsification.

The President. Let us hear from Senator Enrile.

Senator Enrile. Mr. President, I think, all of the crimes that are included in Section 2 go into the definition of the crime of plunder. And so, when we make an allegation that he committed the crime of plunder, all of these elements are deemed included in the allegation.

So, these are the facts that must be established by the evidence. And, if we acquit him of the crime of plunder, I doubt whether we can prosecute him again for any of the crimes mentioned in Section 2. Because, these constitute the elements of the crime of plunder. We cannot convict a person for two different crimes based on the same facts.

Senator Guingona. Mr. President, under Section 2, there is required a series or, as amended, a conspiracy of overt or criminal acts.

The President. Two or more.

Senator Guingona. Yes, Mr. President. Bribery which may not necessarily be included in extortion; extortion which may not necessarily be included in malversation of public funds; swindling which may or may not be included in malversation; falsification of public documents which may or may not be included in, but as a matter of fact, be even contrary or inconsistent with extortion; coercion which may not be related at all to bribery; and then there is theft, frauds, illegal exactions, violations of the Anti-Graft and Corrupt Practices Act. It seems, Mr. President, that it is not fitting that we complex these into the crime of plunder. And, because of lack of evidence for conspiracy he is acquitted of plunder, and he gets away under the theory of double jeopardy for the other crimes mentioned.

Senator Enrile. But, he will be necessarily included in the information based on the allegations of facts constituting plunder. And, if we allege conspiracy and we have not proven conspiracy and he gets acquitted, I think, I entertain seriously that double jeopardy shall have set in at that point, especially if in the case of the other participants to the crime, there are allegations tending to establish the elements of the crime for which we are trying to charge him again.

SUSPENSION OF THE SESSION



The President. Let us suspend the session for a minute, if there is no objection. *[There was none.]*

*It was 7:33 p.m.*

# RESUMPTION OF THE SESSION

*At 7:36 p.m., the session was resumed.*

The President. The session is resumed.

Senator Guingona. Mr. President, after the recess, we would just like to spread on the record: one, that this is not a complex crime; second, that the elements of double jeopardy may or may not be present depending on the circumstances of each case. We intended that amendment to stress the fact that it does not necessarily follow that just because an accused is acquitted for the crime of plunder, that he can no longer be prosecuted for bribery, coercion, et cetera, mentioned in Section 2. It would depend on each particular case.

Therefore, I would just like to spread that on the record, and withdraw the amendment.

Senator Tañada. Thank you, Mr. President.

The President. The next amendment.

Senator Ziga. Mr. President.

The President. Senator Ziga is recognized.

Senator Ziga. Mr. President, if I may go back to page 2.

Line 25, Mr. President, I would propose to delete the words: "a series of overt or criminal acts..."

The President. It is already covered by the Maceda Amendment — "two or more".

Senator Ziga. Yes, Mr. President, that has been covered. I am sorry.

# ZIGA AMENDMENT

I therefore would like to proceed to line 29, page 2, after the words: "as defined in Republic Act No. 3019", delete the words "and like offenses".

Senator Tañada. That is accepted, Mr. President.

The President. Is there any objection? *[Silence]* Hearing none, the amendment is approved.

Senator Paterno is recognized.

Senator Paterno. Page 3, Mr. President, line 6.

The President. Are we on page 3 now?

Senator Paterno. Page 3, Mr. President, line 6, before the words: "life imprisonment", the phrase "a minimum penalty of".

The President. How will it read?

Senator Paterno. "...shall be punished with a minimum penalty of life imprisonment and perpetual disqualification from public office."

That would be followed, Mr. President, by a sentence which would say: "THE OFFENSE OF PLUNDER IS HEREBY DECLARED A HEINOUS CRIME SUBJECT TO THE DEATH PENALTY."

The President. What is the pleasure of the Sponsor?

Senator Tañada. I was talking with Senator Romulo, Mr. President, I did not get completely the....

The President. Shall we restate the amendment?

Senator Paterno. Maybe, may I state it as one amendment, Mr. President, so that it is easier to grasp?

On page 3, line 6, before the words "life imprisonment" the phrase: "A MINIMUM PENALTY OF". And then after "office and the period (.)" on the succeeding line, the sentence: "THE OFFENSE OF PLUNDER IS HEREBY DECLARED A HEINOUS CRIME comma (,) SUBJECT TO THE DEATH PENALTY period (.)"

Senator Tañada. Mr. President, I am sorry, I cannot accept the amendment being proposed by Senator Paterno. I don't believe it will be a real deterrent. This is, of course, my personal opinion. Moreover, I am against restoring the death penalty into our statute books, as a matter of principle. I believe the penalty of life imprisonment and permanent disqualification from holding public office would be sufficient penalty for anyone who is found guilty of the crime of plunder.

Senator Paterno. I respect the beliefs of Senator Tañada, Mr. President. But when we are talking of people who commit the crime of plunder, we are talking of people who will not be dissuaded by anything other than capital punishment. And I am afraid I will have to insist on a vote on this particular amendment, Mr. President.

Senator Enrile. Mr. President.

The President. Senator Enrile is recognized.

Senator Enrile. Mr. President, apart from my own abhorrence in inflicting the death penalty against a fellow human being, I equally entertain the great doubt whether that is really a sound policy to adopt at this time, because P100 million today maybe something of value. But considering the present trend of the economy, maybe, next year P100 million might be just the equivalent of P1000 today because of inflation. So we will be killing people for plundering the economy so-called. But in fact, it is the product of economic difficulties. So, Mr. President, P100 million today maybe of value, but if we are not careful and we become like Germany of 1923 up to 1927, we might be carting pesos to the market.

Senator Paterno. Mr. President, we can handle that by saying: "OR TOTAL VALUE OF P100 MILLION IN 1989 VALUE."

#### SUSPENSION OF THE SESSION

The President. Let us suspend the session for one minute, if there is no objection. *[There was none.]*

*It was 7:43 p.m.*

#### RESUMPTION OF THE SESSION

*At 7:47 p.m., the session was resumed.*

The President. The session is resumed.

Senator Tañada. Mr. President, Senator Romulo has a proposed amendment.

Mr. President, but first there should be a manifestation by Senator Paterno.

Senator Paterno. Mr. President, I understand that there is a motion to reduce the amount of the offense of plunder. So, I would like to defer my proposed amendment until I shall have listened to what that new definition would be.

The President. Senator Romulo is recognized.

Senator Romulo. Mr. President, Senator Maceda and myself would like to propose that in lieu of, less than P100 million that we instead change that to, not less than "P50 MILLION".

The President. That is on the first two lines of page 3. Is there any objection?

Senator Tañada. We accept it, Mr. President.

The President. There being no objection, the amendment is approved. In view of which Senator Paterno will make a manifestation.

Senator Paterno. Mr. President, out of respect for the sentiments of the two authors, namely, the Senate President, and Senator Tañada, I reluctantly defer my suggestion for defining a heinous crime until some other date.

Thank you, Mr. President.

The President. Thank you.

Senator Saguisag is recognized, then Senator Ziga.

Senator Saguisag. Ito po ba ay walang mga degree, degree or gradations, itong parusang ito?

Senator Tañada. We would be governed by the existing provisions of the Revised Penal Code, Criminal Procedure and other special laws.

Senator Saguisag. I really doubt whether the Revised Penal Code could apply to a special law. The way it is worded now, if I were the plunderer, let us say, I obtain P500 or P100 million, if in the course of my plundering I gave my driver P50 cigarette money. He knew that that was part of what I have looted, iyun po ba ay ipakukulong natin ng kadena perpetuwa?

Senator Tañada. One can be a principal by direct participation, by inducement, or an accomplice or an accessory before or after the fact.

#### SAGUISAG AMENDMENT

Senator Saguisag. As I said, if it is not mentioned in the law, I really doubt whether we can incorporate by reference the provisions of the penal code. It has a different regime altogether. In other words, maybe I was thinking that line 7, page 3, from public office, we should add some such language as "BUT THE COURT MAY IMPOSE LOWER PENALTIES WHEN THERE ARE MITIGATING OR ATTENUATING CIRCUMSTANCES." Subject to style. But otherwise, baka wala pang discretion dito maski napagaan or napaliit ang partisipasyon. Medyo po Draconian itong...

Senator Tañada. We accept, Mr. President.

The President. Subject to refinement, is there no objection? *[Silence]* Hearing none, the amendment is approved.

Senator Enrile is recognized.

**Senator Enrile.** I am a little bothered by this term "knowingly benefited". Mr. President, suppose the teenage daughter of the plunderer goes to school in a chauffeured limousine owned by the plunderer and realized that the parent plunderer was plundering the country, would she equally suffer the penalty of life imprisonment?

**Senator Tañada.** I suppose, Mr. President, the Court will take into consideration whatever other circumstances may be present and the evidence that will be presented before the court.

**Senator Enrile.** But as it is worded, Mr. President, the Court might have no discretion unless we require them to exercise discretion. How about a prelate of the church, who receives a contribution from the plunderer knowing that the plunderer is a plunderer. Would the prelate of the church equally suffer the penalty of life imprisonment?

**Senator Tañada.** He could be found guilty as an accessory, Mr. President, after the fact and then the corresponding penalty could be imposed depending on the evidence submitted to the court.

**Senator Enrile.** The word here, Mr. President, "such public officer or person who conspired or knowingly benefited". One does not have to conspire or rescheme. The only element needed is that he "knowingly benefited". A candidate for the Senate, for instance, who received a political contribution from a plunderer, knowing that the contributor is a plunderer and therefore, he knowingly benefited from the plunder, would he also suffer the penalty, Mr. President, for life imprisonment?

**Senator Tañada.** In the committee amendments, Mr. President, we have deleted these lines 1 to 4 and part of line 5, on page 3. But, in a way, Mr. President, it is good that the Gentleman is bringing out these questions, I believe that under the examples he has given, the Court will have to ....

**Senator Enrile.** How about the wife, Mr. President, he may not agree with the plunderer to plunder the country but because she is a dutiful wife or a faithful husband, she has to keep her or his vow of fidelity to the spouse. And, of course, she enjoys the benefits out of the plunder. Would the Gentleman now impute to her or to him the crime of plunder simply because she or he knowingly benefited out of the fruits of the plunder and, therefore, she must suffer or he must suffer the penalty of life imprisonment?

**The President.** That was stricken out already in the Committee amendment.

**Senator Tañada.** Yes, Mr. President. Lines 1 to 4 and part of line 5 were stricken out in the Committee amendment. But, as

I said, the examples of the Minority Floor Leader are still worth spreading in the *Record*. And, I believe that in those examples, the Court will have just to take into consideration all the other circumstances prevailing in the case and the evidence that will be submitted.

**The President.** In any event, "knowingly benefited" has already been stricken off.

**Senator Tañada.** Yes, Mr. President.

**The President.** Senator Guingona is recognized, and then Senator Ziga.

**Senator Guingona.** May I just be clarified Mr. President. In this Section 4, a pattern of the criminal acts is all that is required. Would this pattern of criminal acts be also sufficient to establish a prima facie case?

**Senator Tañada.** Mr. President, under Section 4, it would not only be sufficient to establish a prima facie case. It would be sufficient to establish guilt as long as the evidence necessary to establish guilt beyond reasonable doubt is presented.

**Senator Guingona.** So, may I therefore move for the amendment, Mr. President, changing on lines 22 to line 26 the words "from office" and instead say "WHENEVER A CRIMINAL ACTION IS COMMENCED AGAINST ANY PUBLIC OFFICER UNDER THIS ACT HE SHALL BE SUSPENDED from office".

**Senator Tañada.** That is on what line, Mr. President?

**Senator Guingona.** From line 22 to line 26, the words "from office".

**The President.** The Chair believes that under the rules already laid down by the Sandiganbayan in a number of cases, the moment there is an information filed, one has to be suspended.

**Senator Guingona.** No, Mr. President. Under my amendment, it is from the commencement of a criminal action. That means that we do not have to wait for the information as long as there is a complaint....

**The President.** If the complaint has no basis at all and it is not with the Sandiganbayan yet, it is with the Tanodbayan, that may not be enough. But, under the jurisprudence laid down by the Sandiganbayan, the moment there is an information filed with the Sandiganbayan, that means there is already probable cause. Suspension will ensue automatically.

**Senator Guingona.** The rationale behind this, Mr. President, is that the public official here who is capable of plunder is

powerful and, therefore, even upon the commencement of a criminal action, he should be suspended. And if there is no information filed subsequently, then he is reinstated.

**The President.** What is the pleasure of the Sponsor?

**Senator Tañada.** Mr. President, I would prefer to retain the present wording of Section 5, that is, only when the information is filed can the public officer or employee be suspended, because this could be a source of a lot of harassments and injustice.

**Senator Guingona.** Then, I will not insist, Mr. President.

**The President.** Senator Enrile wants to say something.

**Senator Enrile.** No. I am going to touch on a different matter, Mr. President, and that is in connection with my previous question. I discovered that in the amended version of the bill, the phrase "... or knowingly benefited from the proceeds of said offense ..." is still carried as a committee amendment. Therefore, I think, the questions that I posited are still valid questions, apart from the fact that in the definition of the crime, it says "Any public officer who, by himself, or in connivance with members of his family ...".

Suppose a 17 year-old daughter or son was used by the father to become the titleholder of shares of stock in San Miguel or in PLDT, and this is a product of a plunder, would this child be imprisoned for life simply because of the act of the father? Because, there was a connivance with the father and he might have knowingly benefited out of the act of plunder. How about a maid who becomes a titleholder of a piece of land serving as a dummy?

**Senator Tañada.** Yes, Mr. President. I believe, the court will just have to consider all the circumstances and the evidence presented to it.

**Senator Enrile.** But, if all the elements of the crime, Mr. President, are proven by the astute prosecuting attorney, especially when conspiracy is proven that the act of one is the act of all, I do not think the court will have any discretion given the present manner by which this law has been crafted. We will be sending people to an imprisonment for life without considering the degree of their participation or their malice in committing the crime.

**Senator Tañada.** Mr. President, I would like to think that the court would take into consideration the evidence and circumstances prevailing with respect to each one of the accused.

**Senator Enrile.** But, Mr. President, the penalty is indivisible. You cannot divide the penalty of life imprisonment into degrees. It is a one, single, indivisible penalty, and the wording of the law

is, "Any person who schemed or conspired with the said public official in the commission of plunder or knowingly benefited from the proceeds of said offense, shall likewise be punished by life imprisonment." The judge will have no discretion. It is a very simple matter of proving the facts for the fiscal to do. Just reintroduce the evidence. The benefits he or she enjoyed resulted from plunder. So, all the elements of the crime, as far as that person is concerned, had been proven, although the amount of the benefit is miniscule compared to the total amount of plunder.

**Senator Tañada.** If it will help, Mr. President, perhaps under those circumstances, under those examples the Gentleman gave, we can add a phrase here which would say: "AND SUCH OTHER PENALTY AS MAY BE DETERMINED BY THE COURT."

**Senator Enrile.** My problem here, Mr. President, is the use of the phrase "or knowingly benefited", because it might be that the person knew that the benefactor is a plunderer but he belongs to a poor family, he wants to go to school. The plunderer said: "Well, I will send you to school. I will give a scholarship." And he enjoyed this scholarship.

**Senator Tañada.** In such an example, Mr. President, if we would add that phrase, the Court would have the discretion of whether to impose life imprisonment or such other penalty.

**Senator Enrile.** But what will be the penalty, Mr. President? There is no other penalty provided in this statute other than life imprisonment. We will have to provide a penalty of some kind.

Anyway, I am raising this question, Mr. President, because it might pose a problem for many people in the future. We do not know.

**Senator Tañada.** Yes, Mr. President, anyway, it is already in the *Record* that in such a situation the court should take into consideration all the circumstances and the evidence that may be presented as far as each of the accused is concerned.

**Senator Ziga.** Mr. President.

**The President.** Senator Ziga is recognized.

#### ZIGA AMENDMENTS

**Senator Ziga.** Thank you, Mr. President. We would like to propose on page 3, line 8, after the word "wealth", insert the words "AND THEIR INTERESTS AND OTHER INCOMES AND ASSETS INCLUDING THE PROPERTIES AND SHARES OF STOCKS DERIVED FROM THE DEPOSIT OR INVESTMENT THEREOF."

Senator Tañada. It is accepted, Mr. President.

The President. Is there any objection? [Silence] Hearing none, the amendment is approved.

Senator Ziga. Also, Mr. President, on line 15, the first paragraph of Section 4, I would like to propose to insert a paragraph on line 15, after the words: "Rule of Evidence", the following:

"THE BURDEN OF PROOF AS TO THE CRIME OF PLUNDER LIES WITH THE PROSECUTION. ONCE THE PROSECUTION PROVES THAT THE WEALTH ACCUMULATED BY THE ACCUSED IS MANIFESTLY OUT OF PROPORTION TO HIS SALARY AND OTHER LAWFUL INCOME, IT SHALL DEVOLVE UPON THE ACCUSED TO SHOW THAT SUCH WEALTH WAS ACQUIRED THROUGH LAWFUL MEANS."

The President. What is the pleasure of the Sponsor?

Senator Tañada. I accept, Mr. President.

The President. Is there any objection? [Silence] Hearing none, the amendment is approved.

Is there any further amendment? [Silence]

If there is none, the Majority Floor Leader is recognized.

Senator Pimentel. Mr. President.

Senator Romulo. Mr. President.

The President. Senator Pimentel is recognized, and then Senator Romulo.

#### PIMENTEL AMENDMENT

Senator Pimentel. Mr. President, in between "perpetual" and "disqualification", it should be "perpetual ABSOLUTE disqualification".

Senator Tañada. It is accepted, Mr. President.

The President. Is there any objection? [Silence] Hearing none, the amendment is approved.

Senator Romulo is recognized.

Senator Romulo. Mr. President, in another subject matter, may I manifest that on Senate Bill No. 835....

The President. Teka muna. Let us approve this first.

The Majority Floor Leader is recognized.

#### APPROVAL OF SENATE BILL NO. 733 ON SECOND READING, AS AMENDED

Senator Mercado. May I reiterate my motion to close the period of amendments and approve on Second Reading Senate Bill No. 733.

The President. We shall now vote on the bill on Second Reading. As many as are in favor of the bill, will please say Aye. [Several Senators: Aye] As many as are against will please say Nay. [Silence] Senate Bill No. 733 is approved on Second Reading.

Now, Senator Romulo is recognized.

#### MANIFESTATION OF SENATOR ROMULO (Senators Ziga, Tamano and Romulo as Authors of Senate Bill No. 835)

Senator Romulo. Yes, Mr. President. On Senate Bill No. 835, entitled

#### AN ACT GRANTING DISCOUNT PRIVILEGES TO SENIOR CITIZENS, AND FOR OTHER PUR- POSES,

the Authors should read: Senators Ziga, Tamano and Romulo.

The President. All right. Let that be made on matter of record.

#### ADDITIONAL REFERENCE OF BUSINESS

Senator Romulo. Mr. President, we have Additional Reference of Business. May I ask the Secretary to read the same.

The President. The Secretary may read the Additional Reference of Business.

#### MESSAGE FROM THE HOUSE OF REPRESENTATIVES

The Secretary.

June 1, 1989

Mr. President:

I have been directed to inform the Senate that the House of Representatives approved on May 31, 1989, the Conference Committee Report on the disagreeing provisions of House Concurrent Resolution No. 17, entitled